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EXAMINER

LUGO, DAVID B

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2634

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 21

Application Number: 09/204,370
Filing Date: December 04, 1998
Appellant(s): ATARIUS ET AL.

Stephen W. Palan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/20/04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-16, 18, 19, 21, 22, 24, 26, 27, 29 and 31 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

JP 10164011 A (Engl. transl.)	KITADE	6-1998
6,456,827	KUBO et al.	9-2002
6,072,807	DAUDELIN	6-2000
5,987,012	BRUCKERT et al.	11-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-16, 18, 19, 21, 22, 24, 26, 27, 29 and 31 are rejected under 35 U.S.C. 103(a).

This rejection is set forth in prior Office Action, Paper No. 16.

(11) Response to Argument

A. Rejection of claims 19 and 21 in view of Kitade and Daudelin.

Regarding claims 19 and 21, appellant argues that the combination of Kitade and Daudelin does not disclose or suggest all of the elements of claims 19 and 21. In particular, appellant argues that the disclosed references fail to teach a “selector configured to use the input signal, the set of candidate paths and a quality signal from the RAKE receiver to select a smaller set of candidate paths” as recited in claim 19. In addition, appellant argues one of ordinary skill in the art would not have been motivated to combine the references as described in the final Office action. The examiner respectfully disagrees.

Kitade discloses an apparatus for configuring RAKE receiver 207 in Fig. 2, comprising a searcher that includes correlator for search 200, and a selector that includes correlator for trackings 202, searching process part 206, synthesis equipment 210 and path selection equipment 209, and is configured to use an input signal and a set of candidate paths to select a smaller set of

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candidate paths in the RAKE receiver, as described by Kitade in paragraph 19. Kitade does not expressly state that the selector receives a quality signal from the RAKE receiver. Daudelin states in column 3, lines 8-10, that “a rake receiver will offer the best performance when its fingers are, at every instant, demodulating the best constituent signals, and not other signals”. To accomplish this, Daudelin discloses a finger selector/assignor in Fig. 4 where “finger assignor 404 advantageously receives at its inputs... (2) an indication from rake receiver 407 of... (d) the signal quality of each constituent signal that is assigned to a finger” (col. 6, lines 18-27), and uses this information to assign a suitable constituent signal to a finger (col. 6, lines 36-39). It is considered to have been obvious to one of ordinary skill in the art to combine the teaching of Daudelin of supplying a quality signal to a finger assignor/ path selector for selecting paths to be assigned to the fingers of a RAKE receiver, with the apparatus for configuring a RAKE receiver taught by Kitade in order to offer optimal performance by demodulating the best constituent signals (Daudelin, col. 3, lines 8-10).

Appellant argues that, assuming that one of ordinary skill in the art would have been motivated to modify Kitade to include the quality signal provided by the RAKE receiver disclosed by Daudelin, the proposed combination would result in a quality signal being supplied to a searcher, and not a selector as claimed. However, although finger assignor 404 includes a searcher element 411, the finger assignor also performs the function of assigning or selecting constituent paths to fingers of RAKE receiver 407 (col. 4, line 67 to col. 5, line 3). When finger assignor 404 identifies a constituent signal, using the information supplied to it from the RAKE including the signal quality information the assignor directly supplies orders to the RAKE receiver to assign the signal to a finger of the RAKE, as stated in column 4, lines 49-50, and

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shown in Figure 4. In Kitade, the searching and selecting functions are performed by separate components. In the combination of Kitade and Daudelin, one of ordinary skill in the art would have been motivated to apply the teaching of Daudelin of supplying signal quality information to a finger assignor by supplying such signal quality information to the selector of Kitade since it is the selector that corresponds to the unit that directly supplies the best constituent signals to the RAKE receiver for demodulation.

Appellant further argues that the examiner has not explained why one of ordinary skill in the art would move the path selection function of Daudelin to the tracking function of Kitade. However, as stated above as well as in the final Office action, what is considered the selector of Kitade includes correlator for trackings 202 in addition to path selection equipment 209, among other things. Hence, the selector of Kitade, jointly comprising all of the components discussed above, already performs a path selecting and assigning function. The examiner is thus not proposing to move any function of Daudelin to any other function of Kitade. The examiner is merely relying on the teaching of supplying a quality signal to a finger assignor, as disclosed by Daudelin, and explains why one of ordinary skill in the art would be motivated to apply such a teaching to the selector of Kitade.

Accordingly, as the cited references disclose all of the limitations of claim 19, and sufficient motivation is provided to combine the references, it is believed that the rejection of claim 19 should be sustained.

Regarding claim 21, appellant states that the claim is patentable based on its dependency from claim 19. Since the rejection of claim 19 should be sustained, the rejection of claim 21 should also be sustained.

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B. Rejection of claims 1-10, 13-16, 18, 22, 24, 26, 27, 29 and 31 in view of Kitade, Daudelin and Kubo.

Regarding claims 1-7 and 13, appellant argues that the combination of Kitade, Daudelin and Kubo does not disclose or suggest all of the elements of claim 1. In particular, appellant argues that the disclosed references fail to teach a “second stage configured to use the first set of more than N paths, the input signal and a quality signal from the RAKE receiver to generate a set of N paths, the second stage generates the set of N paths more frequently than the first stage generates the set of more than N paths” as recited in claim 1. The examiner respectfully disagrees.

Regarding the limitation of “second stage configured to use the first set of more than N paths, the input signal and a quality signal from the RAKE receiver to generate a set of N paths”, appellant references arguments presented with respect to claim 19. However, as stated above, it is believed that the combination of Kitade and Daudelin indeed suggests this claim limitation. Kitade discloses a RAKE receiver in Fig. 2 having a first stage that includes correlator for search 200 for using an input signal to find a set of more than N paths, and a second stage that includes correlator for trackings 202, a portion of searching process part 206, synthesis equipment 210 and path selection equipment 209, which is configured to use the set of more than N paths and the input signal to generate a set of N paths, as described by Kitade in paragraphs 15 and 19. (It is noted that the embodiments of Figures 1 and 2 are analogous with the exception of synthesis equipment 210 being added in the embodiment of Fig. 2 – see page 15, first section of paragraph 19). Kitade does not expressly state that the second stage receives a quality signal from the RAKE receiver. However, as discussed above, Daudelin discloses a finger assignor that receives

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signal quality information. It is considered to have been obvious to one of ordinary skill in the art to combine the teaching of Daudelin of supplying a quality signal to a finger assignor/ path selector for selecting paths to be assigned to the fingers of a RAKE receiver, with the apparatus for configuring a RAKE receiver taught by Kitade in order to offer optimal performance by demodulating the best constituent signals (Daudelin, col. 3, lines 8-10).

Further, in response to appellant's argument alleging that one of ordinary skill in the art would not have been motivated to combine Kitade and Daudelin in the manner described in the Office action for similar reasons to those discussed with regard to claim 19, the examiner references the response to such argument presented above.

Regarding the limitation of the second stage generating paths more frequently than the first stage, appellant admits in the last sentence of page 10 of the appeal brief that "upon a further review of the cited documents, it appears that Kitade discloses such." The examiner agrees with this characterization of Kitade. Accordingly, the arguments presented with respect to the combination of Kitade and Daudelin with Kubo are rendered moot.

In accordance with MPEP § 1208.01, since reliance upon fewer references in affirming a rejection under 35 U.S.C. 103 does not constitute a new ground of rejection, and Kitade and Daudelin are considered to disclose all of the limitations of claim 1 along with sufficient motivation, it is believed that the rejection of claim 1 should be sustained.

Regarding claims 2-7 and 13, appellant states that those claims are patentable based on their dependency from claim 1. Since the rejection of claim 1 should be sustained, the rejection of claims 2-7 and 13 should also be sustained.

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Regarding claim 8, appellant argues that the rejection is improper. The examiner respectfully disagrees. Kitade discloses a searcher implemented using a correlator 200. In the final rejection, it is stated that searchers using matched filters are well known in the art, and reference is made to Kubo et al., col. 5, line 58 which discloses a searcher using a matched filter. In the rejection, it is stated that it would have been obvious to one of ordinary skill in the art to use a searcher using a matched filter in the RAKE receiver of Kitade as searchers using matched filters and those using correlators are well-recognized art equivalents. Appellant argues that merely because matched filters and correlators are allegedly well recognized art equivalents does not explain why one of ordinary skill in the art would have been motivated to modify Kitade to use matched filters. However, according to MPEP § 2144, sources of rationale supporting a rejection under 35 U.S.C. 103 include "ART-RECOGNIZED EQUIVALENTS" (see heading). Further, according to MPEP § 2144.06 under the heading "SUBSTITUTING EQUIVALENTS KNOWN FOR THE SAME PURPOSE", equivalence may be relied upon as a rationale supporting an obviousness rejection as long as the equivalency is recognized in the prior art. Appellant does not argue that searchers using matched filters and those using correlators are not well-recognized art equivalents. Further, applicant has admitted as much in the instant application, such as in page 1, lines 7-10, where "a conventional RAKE receiver" is described as including a "searcher [that] uses a matched filter (or a similar correlation scheme)". Hence, in accordance with MPEP § 2144.06, the fact that matched filters and correlators are well-recognized art equivalents is sufficient to support the obviousness rejection of claim 8.

Accordingly, it is believed that the rejection of claim 8 should be sustained.

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Regarding claim 10, appellant states that the claim is patentable based on its dependency from claim 8. Since the rejection of claim 8 should be sustained, the rejection of claim 10 should also be sustained.

Regarding claim 9, appellant argues that the combination of Kitade, Daudelin and Kubo do not render claim 9 unpatentable because the combination does not disclose or suggest "the second stage configured to generate a new set of N paths while the first stage is inactive". In response, as admitted by appellant in their discussion of claim 1 in page 10, lines 3-8 of the brief, Kitade discloses that if more paths than correlators in the demodulator are tracked, it is not necessary to wait for the end of a searching process to provide a path to the correlators in the demodulator (see paragraph 0017 of Kitade). Hence, the second stage is not continually dependent on the searcher in selecting N paths for demodulation, as it makes use of the more than N paths already supplied thereto via searching process part 206. Further, Kubo discloses a system that can be used with a Rake receiver where a searcher can be placed in an inactive mode (col. 8, lines 41-45) to prevent the search operation from being performed more than needed and conserve power consumed by the searcher (col. 6, lines 26-31). The searcher is thus placed in an inactive mode, while the rest of the receiver continues to operate and demodulate the received signals. Since part of the operation of the "selector" of Kitade includes the ability to not wait for the end of a searching process to provide a new set of paths to the RAKE receiver and is not continually dependent on the searcher, as stated above, in the proposed combination of Kubo with Kitade (and Daudelin), it would have been fairly suggested to one of ordinary skill in the art that while the searcher is placed in an inactive mode, the selector would continue to operate, providing new paths to the RAKE receiver as necessary.

Accordingly, it is believed that the combination discloses or suggests all of the limitations of claim 9, and the rejection should be sustained.

Regarding claims 14, 15 and 18, appellant argues that the combination of Kitade, Daudelin and Kubo do not render the claims unpatentable because the combination does not disclose or suggest all of the elements of claim 14, namely, a “selector configured to use the input signal, the set of candidate paths and a quality signal from the RAKE receiver to select a subset of candidate paths that are used to configure the RAKE receiver, the selector configured to generate a new subset of paths while the searcher is inactive”. The examiner respectfully disagrees.

Regarding the limitation of “the selector configured to use the input signal, the set of candidate paths and a quality signal from the RAKE receiver”, appellant references arguments presented previously with respect to claims 1 and 19. However, as stated above, it is believed that the combination of Kitade and Daudelin indeed suggests this claim limitation. Kitade discloses a RAKE receiver, as discussed above, including a searcher 200 for generating a set of candidate paths and path selection equipment 209 configured to use the set of candidate paths to select a subset of candidate paths. Kitade does not expressly state that the selector receives a quality signal from the RAKE receiver. However, as also discussed above, Daudelin discloses a finger assignor that receives signal quality information. It is considered to have been obvious to one of ordinary skill in the art to combine this teaching of Daudelin with the apparatus for configuring a RAKE receiver taught by Kitade in order to offer optimal performance by demodulating the best constituent signals, as stated above.

Regarding the limitation of “the selector configured to generate a new subset of paths while the searcher is inactive”, appellant argues that Kubo does not disclose a relationship between the selector and the searcher, or that the selector is configured to generate a new subset of paths while the searcher is inactive. However, as discussed above, Kitade discloses that if more paths than correlators in the demodulator are tracked, it is not necessary to wait for the end of a searching process to provide a path to the correlators in the demodulator (see paragraph 0017 of Kitade). The path selection equipment is thus not continually dependent on the searcher in selecting a subset of candidate paths for demodulation, as it makes use of the set of candidate paths already supplied thereto via correlator for trackings 202. Kubo discloses a system that can be used with a Rake receiver where a searcher can be placed in an inactive mode (col. 8, lines 41-45) to prevent the search operation from being performed more than needed and conserve power consumed by the searcher (col. 6, lines 26-31). The searcher is thus placed in an inactive mode, while the rest of the receiver continues to operate and demodulate the received signals. Since part of the operation of the selector of Kitade includes the ability to not wait for the end of a searching process to provide a new set of paths to the RAKE receiver and is not continually dependent on the searcher, as stated above, in the proposed combination of Kubo with Kitade (and Daudelin), it would have been fairly suggested to one of ordinary skill in the art that while the searcher is placed in an inactive mode, the selector would continue to operate, providing new paths to the RAKE receiver as necessary.

Accordingly, it is believed that the combination discloses or suggests all of the limitations of claim 14, and the rejection should be sustained.

Regarding claims 15 and 18, appellant states that those claims are patentable based on their dependency from claim 14. Since the rejection of claim 14 should be sustained, the rejection of claims 15 and 18 should also be sustained.

Regarding claim 16, appellant argues that the combination of Kitade, Kubo and Daudelin does not render the claim unpatentable for similar reasons to those discussed above with regard to claim 8. However, as stated above and in accordance with MPEP § 2144.06, the fact that matched filters and correlators are well-recognized art equivalents is sufficient to support the obviousness rejection under 35 U.S.C. 103. Hence, it is believed that the rejection of claim 16 should be sustained.

Regarding claims 22, 24 and 26, appellant argues that appellant argues that the combination of Kitade, Daudelin and Kubo do not render the claims unpatentable because the combination does not disclose or suggest all of the elements of claim 22, namely, “selecting a second set of paths from the first set of paths based on a second set of correlation values and a quality signal from the RAKE receiver”, and does not disclose or suggest “updating the second set of paths without updating the first set of paths”. The examiner respectfully disagrees.

Regarding the limitation of “selecting a second set of paths from the first set of paths based on a second set of correlation values and a quality signal from the RAKE receiver”, appellant references arguments presented previously with respect to claim 1. However, as stated above, it is believed that the combination of Kitade and Daudelin indeed suggests this claim limitation. Kitade discloses a RAKE receiver, as discussed above, including a searcher 200 for searching a first set of paths to generate a first set of correlation values and path selection equipment 209 configured to generate a second set of paths based on a second set of correlation

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values output from correlator for trackings 202. Kitade does not expressly state that the selector receives a quality signal from the RAKE receiver. However, as also discussed above, Daudelin discloses a finger assignor that receives signal quality information. It is considered to have been obvious to one of ordinary skill in the art to combine this teaching of Daudelin with the apparatus for configuring a RAKE receiver taught by Kitade in order to offer optimal performance by demodulating the best constituent signals, as stated above.

In response to appellant's argument regarding the limitation of "updating the second set of paths without updating the first set of paths", referencing appellants discussion of claim 1 in page 10, lines 6-8 of the brief, appellant has already admitted that "Kitade does disclose that the tracker generates paths for the correlators in the demodulator more frequently than the searcher generates its paths." Accordingly, since the tracker generates paths more frequently than the searcher generates paths, the number of times the tracker provides the second set of paths is thus greater than the number of times the searcher provides the first set of paths. Therefore, there are a number of times when the tracker provides the second set of paths when the searcher is not generating the first set of paths which is at least equal to the difference in the number of times each of the respective components generates their respective paths. Accordingly, since Kitade and Daudelin are considered to disclose all of the limitations of claim 22, the arguments presented with respect to the combination of Kitade and Daudelin with Kubo are rendered moot, and in accordance with MPEP § 1208.01, it is believed that the rejection of claim 22 should be sustained.

Although it is believed that the above discussion is sufficient to support the rejection of claim 22, the examiner will still respond to appellant's arguments regarding the combination of

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Kubo with Kitade and Daudelin. In response to appellant's argument that Kubo does not disclose or suggest that a correlator for trackings should update paths while a searcher does not update its set of paths, it is noted that Kitade discloses if more paths than correlators in the demodulator are tracked, it is not necessary to wait for the end of a searching process to provide a path to the correlators in the demodulator (see paragraph 0017 of Kitade). The correlator for trackings is thus not continually dependent on the searcher in providing paths for demodulation, as it makes use of the first set of correlation values already supplied thereto via searching process part 206. Kubo discloses a system that can be used with a Rake receiver where a searcher can be placed in an inactive mode (col. 8, lines 41-45) to prevent the search operation from being performed more than needed and conserve power consumed by the searcher (col. 6, lines 26-31). Hence, the searcher is placed in an inactive mode, while the rest of the receiver continues to operate and demodulate the received signals. Since part of the operation of the correlators for tracking of Kitade includes the ability to not wait for the end of a searching process to provide a new set of paths to the RAKE receiver and is not continually dependent on the searcher, as stated above, in the proposed combination of Kubo with Kitade (and Daudelin), it would have been fairly suggested to one of ordinary skill in the art that while the searcher is placed in an inactive mode, thereby not generating a first set of paths, the selector would continue to operate, providing new paths to the RAKE receiver as necessary. Accordingly, it is believed that the combination discloses or suggests all of the limitations of claim 22, and the rejection should be sustained.

Regarding claims 24 and 26, appellant states that those claims are patentable based on their dependency from claim 22. Since the rejection of claim 22 should be sustained, the rejection of claims 24 and 26 should also be sustained.

Regarding claims 27, 29 and 31, appellant argues that the combination of Kitade, Daudelin and Kubo do not render the claims unpatentable because the combination does not disclose or suggest all of the elements of claim 27, namely “selecting a second set of paths from the first set of paths based on the correlation values, the input signal and a quality signal from the RAKE receiver”, and does not disclose or suggest “updating the second set of paths without updating the first set of paths”. The examiner respectfully disagrees.

Regarding the limitation of “selecting a second set of paths from the first set of paths based on the correlation values, the input signal and a quality signal from the RAKE receiver”, appellant references arguments presented previously with respect to claim 1. However, as stated above, it is believed that the combination of Kitade and Daudelin indeed suggests this claim limitation. Kitade discloses a RAKE receiver, as discussed above, including a searcher 200 for finding a first set of paths and providing a set of correlation values, and path selection equipment 209 for receiving values from correlator for trackings 202 and generating a second set of paths from the first set of paths based on the correlation values. Kitade does not expressly state that the selector receives a quality signal from the RAKE receiver. However, as also discussed above, Daudelin discloses a finger assignor that receives signal quality information. It is considered to have been obvious to one of ordinary skill in the art to combine this teaching of Daudelin with the apparatus for configuring a RAKE receiver taught by Kitade in order to offer optimal performance by demodulating the best constituent signals, as stated above.

In addition, appellant argues that the combination of Kitade, Daudelin and Kubo does not disclose or suggest a selection based on the correlation values generated by a searching function, as it appears that in Kitade the selection of a path by path selection unit 209 is based on the correlation values of the correlator for trackings. In response, it is noted Kitade discloses that based on the correlation value output by a correlator for search (100/200), a candidate path is selected to be tracked in the correlator for trackings (102/202), which generates a set of correlation values for input into path selection equipment (109/209) for selecting a set of paths for demodulation by the correlator for modulation (104/204) and RAKE receiver (107/207) (see Kitade – paragraphs 12, 13; Figs. 1, 2). The correlation values generated by tracking correlator 202 are inherently based on the correlation values output by the correlator for search 200 since the paths tracked in correlator for trackings 202 are selected based on those correlation values. Therefore, since the correlation values used by path selection equipment 209 are based on the correlation values generated by correlator for search 200, the second set of paths is thus based on the set of correlation values generated by the searching function.

In response to appellant's argument regarding the limitation of "updating the second set of paths without updating the first set of paths", referencing appellants discussion of claim 1 in page 10, lines 6-8 of the brief, appellant has already admitted that "Kitade does disclose that the tracker generates paths for the correlators in the demodulator more frequently than the searcher generates its paths." Accordingly, since the tracker generates paths more frequently than the searcher generates paths, the number of times the tracker provides its set of paths is thus greater than the number of times the searcher provides its set of paths. Therefore, there are a number of times when the tracker provides its set of paths when the searcher is not generating its set of

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paths which is at least equal to the difference in the number of times each of the respective components generates their respective paths. Accordingly, since Kitade and Daudelin are considered to disclose all of the limitations of claim 27, the arguments presented with respect to the combination of Kitade and Daudelin with Kubo are rendered moot, and in accordance with MPEP § 1208.01, it is believed that the rejection of claim 27 should be sustained.

Although it is believed that the above discussion is sufficient to support the rejection of claim 27, the examiner will still respond to appellant's arguments regarding the combination of Kubo with Kitade and Daudelin. In response to appellant's argument that Kubo does not disclose or suggest that a correlator for trackings should update paths while a searcher does not update its set of paths, it is noted that Kitade discloses if more paths than correlators in the demodulator are tracked, it is not necessary to wait for the end of a searching process to provide a path to the correlators in the demodulator (see paragraph 0017 of Kitade). The correlator for trackings is thus not continually dependent on the searcher in selecting paths for demodulation, as it makes use of the set of paths already supplied thereto via searching process part 206. Kubo discloses a system that can be used with a Rake receiver where a searcher can be placed in an inactive mode (col. 8, lines 41-45) to prevent the search operation from being performed more than needed and conserve power consumed by the searcher (col. 6, lines 26-31). Hence, the searcher is placed in an inactive mode, while the rest of the receiver continues to operate and demodulate the received signals. Since part of the operation of the correlators for tracking of Kitade includes the ability to not wait for the end of a searching process to provide a new set of paths to the RAKE receiver and is not continually dependent on the searcher, as stated above, in the proposed combination of Kubo with Kitade (and Daudelin), it would have been fairly

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suggested to one of ordinary skill in the art that while the searcher is placed in an inactive mode, thereby not generating a first set of paths, the selector would continue to operate, providing new paths to the RAKE receiver as necessary. Accordingly, it is believed that the combination discloses or suggests all of the limitations of claim 27, and the rejection should be sustained.

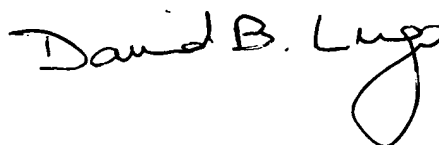
Regarding claims 29 and 31, appellant states that those claims are patentable based on their dependency from claim 27. Since the rejection of claim 27 should be sustained, the rejection of claims 29 and 31 should also be sustained.

C. Rejection of claims 11 and 12 in view of Kitade, Daudelin, Kubo and Bruckert.

Regarding claims 11 and 12, appellant states that those claims are patentable based on their dependency from claim 1. Since the rejection of claim 1 should be sustained, the rejection of claims 11 and 12 should also be sustained.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



David B. Lugo
March 25, 2004


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